IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

S.B. Criminal Revision Petition No.1145/2006.
(Sohan Lal Singharia Vs. State of Rajasthan & Anr.)

DATE OF ORDER : May 31, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. K.S. Rathore for the petitioner.
Mr. K.L. Thakur, Addl. Advocate General for the State.
Mr. Dhirendra Singh for non-petitioner No.2.

BY THE COURT :

This criminal revision petition is directed against order dated 10.11.2006 passed by Addl. Sessions Judge (Fast Track) No.1, Pali (Camp Jaitaran) whereby the revision petition filed by the State through the S.H.O., Police Station Jaitaran was allowed and order dated 10.03.2006 as well as order dated 19.07.2006 passed by learned Addl. Chief Judl. Magistrate, Jaitaran were set aside.

Complainant petitioner Sohanlal Singharia filed a complaint

in the Court of Addl. Chief Judl. Magistrate, Jaitaran on 06.03.2006 upon which vide order dated 10.03.2006 the Court forwarded the complaint under Section 156(3), Cr.P.C. to Police Station Jaitaran and ordered to register the case and conduct investigation into the matter. The S.H.O., Police Station Jaitaran did not comply with the order of the Court and on 21.03.2006 filed an application before the Court with the prayer to recall order dated 10.03.2006. By order dated 19.07.2006 passed on the application filed by the S.H.O., Police Station Jaitaran on 21.03.2006, the Court held that there is no such provision in the Code of Criminal Procedure whereunder the order passed by it may be reviewed by itself and accordingly rejected the application and directed the S.H.O., Police Station Jaitaran to immediately comply with order dated 10.03.2006.

Reverting to the facts narrated in the present revision petition, the facts disclosed in the petition are that a complaint was filed by the complainant-petitioner Sohanlal Singharia who belongs to scheduled caste, being Raigar. Sohanlal Singharia commenced his career as Teacher, Gr.-III and retired from the post of Addl. Director, Primary and Secondary Education, Department of Education, Rajasthan. According to petitioner, one Mohanlal Meghwal, a poor and down-trodden was murdered in village Berkala by accused Shivdan Singh with co-accused Dalel Singh and Tikam Singh on 01.03,.2005 at 8.00 A.M. The

accused persons belonged to rich, resourceful and politically sound Jagirdar family of the village. As such, according to the petitioner, the police was reluctant to take a prompt action against them and he (petitioner), therefore, led agitation to mobilize the authorities for taking appropriate action in the matter.

It is further submitted that in the said case of murder of Mohanlal Meghwal, though FIR was filed against Shivdan Singh, Dalel Singh and Tikam Singh; but, due to their political influence, the police ultimately got Shivdan Singh and Dalel Singh released under Section 169 of the Criminal Procedure Code and Tikam Singh alone was prosecuted in connection with the murder case of Mohanlal Meghwal. Being educated person from the Scheduled Caste category, the petitioner raised voice and led agitation against aforesaid persons and, therefore, with a view to taking revenge, a criminal conspiracy was hatched and carried out to entangle the petitioner in a false criminal case.

According to the petitioner, a false FIR was registered against him and his son for alleged offences under Sections 341, 323/34 I.P.C. The said FIR No.220/05 was filed by one Kishore Singh at Police Station Jaitaran. According to the petitioner, the case was concocted one therefore for implicating the petitioner and his son Narendra at the behest of aforesaid persons and a false medical certificate with regard to fracture of sculp bone was

managed from the Medical Officer Dr. B.R. Patel. Thereafter, the petitioner and his son were arrested while adding offence under Section 307, I.P.C. and, on that basis, petitioner and his son were detained illegally. Both of them remained in police custody and, thereafter, they remained in judicial custody.

According to the petitioner, the so-called opinion of seriousness of the injury was not mentioned in the injury report but the S.H.O. wrote a letter on 22.08.2005 to the Medical Officer, Community Health Centre, Jaitaran and, upon that, Dr. B.L. Patel gave his opinion with regard to seriousness of the injury though earlier in the injury report there was no mention that injury is serious in nature and only X-ray was advised. As per the allegation of the petitioner, knowingly well that Radiologist is available at Bangad Hospital, Pali and injured Kishore was to be brought for X-ray before the Radiologist at the Bangad Hospital, Pali but the S.H.O., P.S. Jaitaran Sunil Vishnoi sent him to Government Referral Hospital, Sojat where the X-ray technician took his X-ray from the front side of the head and, after taking X-ray plates, the injured was allowed to go. On the basis of said X-ray, Dr. B.L. Patel, Bangad Hospital, Pali gave opinion that injury on the sculp of Kishore was having a fracture which was serious in nature and that injury was dangerous to life. On that basis, the S.H.O. added offence under Section 307, I.P.C. When this fact came to the knowledge of the petitioner

and his son they filed application to the Chief Medical & Health Officer, Pali and prayed for constituting a Medical Board. Upon their application, the C.M.H.O., Pali passed an order to Dr. B.L. Patel for constituting a medical board to get opinion with regard to the nature of the injury of injured Kishore. Upon receiving such direction by the C.M.H.O., Dr. B.L. Patel constituted medical board in which Dr. Devendra Kumar Solanki, Dr. Anil Gehlot and Dr. Ramsukh Prajapat were nominated as members of the board and they gave their report while corroborating the opinion given by Dr. B.L. Patel, however, at bottom, they commented that with regard to truthfulness of the opinion the matter may be examined by the Radiologist. As per opinion of the Board, so constituted by Dr. B.L. Patel, the report was to be examined by the Radiologist at Jodhpur but no opinion was taken from the Radiologist at Jodhpur and the petitioner and his son were arrested and sent to police custody and, thereafter, to judicial custody.

The bail application of the petitioner was rejected by the Magistrate and Addl. Sessions Judge but, ultimately, the petitioner was released on bail by the High Court by order dated 11.11.2005 and, in pursuance thereof, he was released on bail on 12.11.2005.

It is contended by learned counsel for the petitioner that in the bail application filed before this Court being S.B. Criminal

Misc. Bail Appln. No.4516/2005, this Court was pleased to pass order on 06.01.2006 to the Principal, Medical College, Jodhpur for constituting a medical board in which one Radiologist was to be included in the medical board. In pursuance of the order passed by the High Court, medical board was constituted and a specific opinion was given by the medical board in which one Radiologist was one of the members of the Board, that after examining the X-ray plates of sculp of injured Kishore, there was no bone injury and the injuries on the chest and head were found to be simple in nature. Upon considering the said report, ultimately, the petitioner was released on bail by this Court.

After being released on bail by this Court, it came to the knowledge of the petitioner that due to criminal conspiracy false medical report of the injured Kishore with regard to fracture upon sculp being serious in nature posing danger to life was obtained and all these efforts were made at the behest of Ex. M.L.A. Shivdan Singh and other members, therefore, being a person belonging to the scheduled caste category, when the petitioner suffered on account of such criminal conspiracy, he filed complaint before the Court of Addl. Chief Judl. Magistrate, Jaitaran. Since besides the aforesaid influential persons, Dr. B.L. Patel of Jaitaran, Dr. Anil Kumar Solanki and Dr. Ramsukh Prajapat gave false report, therefore, cognizance of offence may be taken against all of them. The petitioner prayed in the

complaint that after taking cognizance against them, matter may be investigated. He contended that after the opinion was given by the competent medical board constituted by the Principal, Medical College, Jodhpur, it was ultimately found that due to criminal conspiracy false opinion was obtained and the police officials of the police station Jaitaran made all efforts to implicate the petitioner and his son in the false case. The petitioner contended that he is a retired Addl. Director of the Education Department and the police officials worked and conducted the investigation under the influence of political persons and obtained false medical report of serious injury, therefore, a criminal liability is to be fixed upon them because they successfully obtained fabricated documents and roped in the petitioner in a false criminal case.

The complaint filed by the petitioner was forwarded to the Police Station Jaitaran under Section 156(3), Cr.P.C. by the Addl. Chief Judl. Magistrate, Jaitaran after application of mind and forming opinion that upon perusal of the complaint offence is made out. This order was made on 10.03.2006 and the complaint was sent for investigation to the Police Station, Jaitaran. But, strangely enough, the S.H.O. refused to register the case and chose to file application before the concerned Magistrate praying for recalling the order. The said application for recalling the order dated 10.03.2006 was made on

21.03.2006. After perusal of the said application, the learned Magistrate again passed order on 19.07.2006 that there is no provision in Cr.P.C. for recalling order dated 10.03.2006. The learned Magistrate reiterated stand of the Court relying upon the judgment of the Supreme Court that there is no question of reviewing or recalling order passed for registering the FIR. The learned Addl. Chief Judl. Magistrate passed order on 19.07.2006 as follows :

> "इस प्रकार से इस न्यायालय द्वारा धारा 156(3) दं० प्र० सं० के तहत जो आदेश दिया गया था, थानाधिकारी जैतारण को उसकी पालना करनी चाहिये थी। विद्वान अधिवक्ता परिवादी द्वारा जो न्यायिक दृष्टान्त प्रस्तुत किये गये हैं, उनमें भी माननीय सर्वोच्च न्यायालय ने यही सिद्धान्त प्रतिपादित किये हैं कि दण्ड प्रक्रिया संहिता में ऐसे कोई प्रावधान नहीं हैं कि किसी न्यायालय द्वारा कोई आदेश दिया जाने के बाद वह न्यायालय अपने ही आदेश का किसी भी प्रकार का पुनरावलोकन (रिव्यू) करे। उपरोक्त विवेचन से मैं थानाधिकारी जैतारण द्वारा प्रस्तुत प्रार्थना पत्र दिनांकित 21.3.06 में किसी भी प्रकार का बल नहीं पाता हूँ। एतद् थानाधिकारी जैतारण द्वारा प्रस्तुत प्रार्थना पत्र दिनांकित 21.3.06 अस्वीकार किया जाता है। एवं थानाधिकारी जैतारण को यह आदेश दिया जाता है कि इस न्यायालय द्वारा दिनाँक 10.3.06 को दिये गये आदेश की अविलम्ब पालना करे।"

It is submitted by learned counsel for the petitioner that twice the Addl. Chief Judl. Magistrate, Jaitaran passed order to register the case but the S.H.O. did not register the FIR and, after passing order dated 19.07.2006, preferred revision petition before the Addl. Sessions Judge (Fast Track) No.1, Jaitaran. The learned Addl. Sessions Judge while accepting the revision petition filed by the State through the S.H.O., Police Station, Jaitaran quashed both orders dated 10.03.2006 and 19.07.2006

passed by the Magistrate for registering the FIR. Being aggrieved and dissatisfied with the said orderdated 10.11.2006, the petitioner has preferred this revision petition.

First of all, the learned counsel for the petitioner raised a ground that upon perusal of the complaint filed under Section 190, Cr.P.C. by the complainant petitioner, it is clear that prima facie case with regard to cognizable offence is made out. Learned counsel for the petitioner contended that efforts were made by the officials of the Police Station, Jaitaran to get medical report of seriousness of the injury which was not mentioned as serious in nature by the doctor. Though the so-called medical board was constituted by Dr. B.L. Patel but the injured was not examined by the Radiologist nor he appeared before the medical board; and, ultimately competent medical board was constituted in pursuance of the orders of the High Court in which one of the members was a Radiologist and the injured was directed to remain present before the Board. Thereafter, correct opinion was given by the Board that there was no fracture upon the sculp. It is also submitted that the said Medical Board also took into consideration the X-ray and, thereafter, gave its opinion. Learned counsel for the petitioner therefore contended that the earlier medical board gave report only under the influence of Dr. B.L. Patel and the police officials who were working at the instance of the Shivdan Singh and

Surendra Goyal.

According to the petitioner it is the duty of the State to protect its citizens and as per the provisions of the Criminal Procedure Code, when any order under Section 156 (3) is made by a competent court, then, the Police is lawfully under obligation to register the FIR. According to the petitioner after registering the case forwarded to the Police under Section 156 (3) Cr.P.C., the investigating agency has no option except to investigate into the matter and form an opinion as to the result of the enquiry conducted by it and present the same before the concerned Magistrate under Section 173 of the Code of Criminal Procedure and if ultimately, the Investigating Officer comes to the conclusion that no offence is made out, then, to competently the investigating agency can only file final report in the matter before the court. But in this case, though first the order was made on 10.3.2006 for registering the FIR but the SHO, Police Station Jaitaran took recourse to filing application before the Magistrate to reconsider the order. However, the learned Magistrate again passed order that the SHO is under obligation to register the case and though he has power to conduct the investigation and give final report but he cannot refuse to register the case. It is contended by the learned counsel for the petitioner that strangely the revisional court too has quashed both the orders passed by the Magistrate and upheld action of

the SHO for not registering the case in pursuance of the orders passed by the Magistrate and so also, the revisional court has set aside the orders dated 10.3.2006 and 19.7.2006 while holding that at the time of passing order the Magistrate was under obligation to apply its mind whether cognizable offence is made out or not. Further, the revisional court passed order that the Additional Chief Judicial Magistrate exceeded the jurisdiction vested in it to pass orders for registering the FIR and the SHO concerned is well within his jurisdiction to ask the Magistrate for recalling the order.

It is contended by the learned counsel for the petitioner that the revisional court has committed a serious error of law while quashing the order of the Court whereby the rights of the citizens were sought to be protected by the order of the court. The order of the revisional court is not justified on the basic principles of law. The learned revisional judge has failed to consider the provisions of the relevant law and accepted the revision petition filed by the State through the SHO, who in fact is not an aggrieved party. It is not clear how the concerned SHO is aggrieved by the order passed by the Additional Chief Judicial Magistrate, Jaitaran, who only passed order to register the FIR and make investigation into the matter. According to the learned counsel for the petitioner, so many facts mentioned in the order of the revisional court were not on record but on the

basis of the oral arguments, the revisional court has committed serious error while considering those facts which according to the learned counsel for the petitioner were not on record. Learned counsel for the petitioner vehemently argued that in a democracy the Constitution is Supreme and according to the fundamental duties the State is under obligation to protect the citizens of all sections of the society. It is argued by the learned counsel for the petitioner that the action of the welfare State must be transparent and should not be tainted by mistakes or illegalities for protection of the citizens, the status of any person should not come in way and in this case, the petitioner-complainant while filing the complaint only prayed for registering the matter and conducting investigation therein. Learned counsel for the petitioner urged that it is really unfortunate that the learned revisional Judge accepted the prayer of the SHO and passed illegal order. In these circumstances, this Court is required to see how the rights of the citizens may be protected and if such type of orders as passed by the revisional court will be allowed to stand, then, certainly such cases would not be few that Station House Officers would refuse to register the cases.

Learned counsel for the petitioner invited my attention towards certain judgments of Supreme Court reported in, (1) AIR 2006 SC 1322, 3376 and (2) AIR 1978 SC 986 and submitted that the SHO concerned was duty bound to register

the FIR, therefore, all these aspects of the matter were to be considered by the revisional court but the learned revisional court committed grave error of law in setting aside the order passed by the Additional Chief Judicial Magistrate, Jaitaran knowing it well that on behalf of the State the SHO was to register the FIR and hold investigation into the allegations contained therein. According to him, the finding given by the learned Additional Sessions Judge vide order dated 10.11.2006 is perverse and apparently contrary to the facts on record.

In this case, after issuance of notice on behalf of State of Rajasthan, learned Additional Advocate General, Shri K.L. Thakur put in appearance and on behalf of non-petitioner No.2, advocate Shri Dhirendra Singh appear. While issuing notice in this case on 15.3.2007, SHO – Virendra Singh Rathore was directed to remain present in the Court to explain why he refused to register the case upon the order passed by the Magistrate under Section 156 (3) Cr.P.C. and the learned Public Prosecutor was directed to produce on record the sanction issued by the Collector, Pali for filing revision petition against the order passed by Additional Chief Judicial Magistrate, Jaitaran. On 28.3.2007, photo-stat copy of the sanction issued by the District Collector was filed before this Court and the matter was finally heard.

In this case, following questions require consideration :

(1)Whether the S.H.O. can refuse to register the case when order is passed under Section 156(3), Cr.P.C. for registering the FIR and whether the State has any right under law to challenge the order passed by the Magistrate by way of filing revision petition ?

(2) Whether the State can challenge the order passed by the Magistrate while exercising power under Section 156(3), Cr.P.C. for registering the FIR as an aggrieved party ?

(3) Whether the order passed by the Addl. Sessions Judge (Fast Track) No.1, Jaitaran in exercise of revisional jurisdiction is in accordance with law ?

With regard to question No.1 it is well settled law that at the time of passing order while exercising power under Section 156(3), Cr.P.C. what type of order the Magistrate can pass and what are the bases upon which the Magistrate is empowered to direct for investigation. According to Code of Criminal Procedure, Chapter XII – Information to Police and other Powers of Investigation, a complete procedure is provided as to how information will be given to the police and what are the powers of the investigation. In this regard, first of all, under Section 154, Cr.P.C. every information relating to commission of a cognizable offence is required to be given to the concerned Police Station and the police is required to register the FIR and

to commence investigation in the matter. The first condition is that there is commission of a cognizable offence. Under Section 155, Cr.P.C. it is provided that when the information is given to the police officer in-charge of the Police Station of commission of a non-cognizable offence he shall enter or cause to enter substance of the allegations in the manner as prescribed by the State Government in this behalf and refer the information to the Magistrate. In this section, the police officer is restrained to investigate into a non-cognizable offence without the permission of the Court having power to try such case and where a case relates to two or more offences of which at least one is cognizable the case shall be deemed to be cognizable notwithstanding that other offences are non-cognizable; meaning thereby, that under Section 155, Cr.P.C. there is information to the police, the matter can be investigated if an order is passed by the Magistrate to do the same. Under Section 156, Cr.P.C. there are three sub-sections which provide as under :

> "**156. Police Officer's power to investigate cognizable case**.- (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.
>
> (2) No proceedings of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

> (3) Any Magistrate empowered under section 190 may order such an investigation as above mentioned.

In the present case, the learned Magistrate passed order upon the complaint filed by the petitioner under Section 156(3) Cr.P.C. under which the Magistrate is empowered under Section 190 Cr.P.C. to take cognizance and may pass order for such an investigation therefore according to Section 155, Cr.P.C. no police officer shall investigate a non-cognizable case without the order of the Magistrate. Therefore, at the time of passing order under Section 156(3), Cr.P.C. it must appear that there is a cognizable offence made out prima facie from the facts of the complaint.

In this case after perusal of the complaint, the Magistrate formed opinion that cognizable offence is made out from the facts contained in the complaint, therefore, order was passed to register the FIR. I have perused the order dated 10.03.2006. It is revealed that all the facts were taken into consideration and, thereafter, order was passed for registering the case. But, the S.H.O., Police Station, Jaitaran adjudicated upon the matter and filed application before the Magistrate for recalling order. In the said application, it is submitted by the S.H.O. that upon the same facts FIR was registered in which challan was filed before the Court and the said case is pending before the Court of Addl.

Sessions Judge, Jaitaran. The S.H.O. submitted in the application that it is not permissible under law to investigate the same incident. It was submitted by the S.H.O. before the Magistrate for recalling order dated 10.03.2006 that the complainant has not produced correct facts before the Court, therefore, the order may be recalled. However, fortified by the authoritative pronouncements of the Supreme Court, the learned Magistrate passed order that there is no question of reviewing order dated 10.03.2006, therefore, the application filed by the S.H.O. was dismissed on 19.07.2006.

It is submitted by the learned Addl. Advocate General before the Court while producing on record certain documents of sanction issued by the District Collector, Pali that vide communication dated 22.07.2006 opinion was communicated by the Addl. Director (Prosecution), Pali and, on the same day viz 22.07.2006, the said opinion was brought to the notice of the District Collector and Superintendent of Police and, on the same day i.e. 22.07.2006, the Superintendent of Police forwarded the matter to the District Collector, Pali. On 22.07.2006 itself, the District Collector, Pali issued sanction after application of mind for filing revision petition against orders dated 10.03.2006 and 19.07.2006.

It is thus obvious that right from opinion communicated by the Addl. Director on 22.07.2006, the proceedings for issuing

sanction for filing revision petition before the Addl. Sessions Judge, (Fast Track) No.4, Pali (Headquarter Jaitaran), all these proceedings were taken up on 22.07.2006 itself and, reasons have not been disclosed by the learned Addl. Advocate General how, on one single day, the entire proceedings was taken up in high rush. The only assertion is made that the learned Magistrate passed order on 10.03.2006 exceeding its jurisdiction because under Section 156(3) with regard to cognizable offences and since no cognizable offence was made out from the facts and the Magistrate had only power to take cognizance under Section 190, Cr.P.C. in respect of cognizable offences. It was vehemently urged by the learned Addl. Advocate General that in these circumstances, since the Magistrate exceeded the jurisdiction vested in him, therefore, as soon as opinion was accorded by the Addl. Director (Prosecution) the District Collector, Pali issued sanction on 22.07.2006 itself.

It is true that the Magistrate is under obligation to first ascertain from the complaint whether cognizable offence is made out or not. Upon perusal of the order passed by the learned Addl. Chief Judl. Magistrate, Jaitaran on 10.03.2006 it is revealed that it has been passed after taking into consideration the facts narrated in the complaint and after framing opinion that cognizable offence is made out. Therefore, under Section 190, Cr.P.C. after taking cognizance, the Magistrate has passed order

for registering the FIR. Meaning thereby, that when the order reaches the Station House Officer of the Police Station concerned, cognizance was taken by the Magistrate under Section 190, Cr.P.C. and there was no question of challenge to the formation of opinion by the Magistrate. The Magistrate concerned is, of course, required to form opinion under Section 190,Cr.P.C. for taking cognizance; and, as and when he passes order under Section 156(3) for registering the case for investigation, it is to be deemed that cognizance has already been taken by the Magistrate under Section 190, Cr.P.C. Thus the contention of the concerned S.H.O. that upon the facts of the case no cognizable offence is made out is baseless and unwarranted. There is no provision in the Code of Criminal Procedure which gives power to the S.H.O. to adjudicate upon the order passed by the Magistrate under Section 156(3), Cr.P.C. Of course, after registering the case, the investigating officer has full liberty under the Code of Criminal Procedure for conducting the investigation and form opinion that there is material on record after collecting evidence whether cognizable offence is made out or not. But, in this case, instead of taking recourse to the procedure prescribed in the Code, the S.H.O. who is not an aggrieved party, filed application for recalling the order passed on 10.03.2006. The learned Magistrate was right in rejecting the application because there is no power conferred upon the

Magistrate to review the order passed under Section 156(3), Cr.P.C. Therefore, it can very well be said that without any cogent reasons, depriving the citizen of the right to protection guaranteed by the Constitution, application was filed by the concerned S.H.O. before the Magistrate to recall the order dated 10.03.2006. After directions issued by the Magistrate under Section 156(3), Cr.P.C. the S.H.O. was under obligation to register the case; but, it was not done so and as it has transpired, the matter was brought to the notice of the Superintendent of Police on 22.07.2006 and, on the same day, the Superintendent of Police forwarded the matter to the District Collector, Pali who, without application of mind, on the same day, issued sanction for filing revision petition before the revisional Court.

From the facts narrated above, it is apparently clear that the State authorities/officials obdurately decided not to register the case. Further, attempt was made, showing it up as done in lawful manner, to impress upon the Court that the Court passed wrong order and the order is not required to be complied with. Ultimately, the revision petition was filed.

It may be observed that in view of the Supreme Court judgments reported in AIR 2006 SC 3376, the Magistrate rightly passed order for registering the FIR. Para-10 and 11 of the said judgment reads as under :

> "10. The mandate of Section 154 of the Code is that at the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence, the police officer concerned cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not relevant or credible. In other words, reliability, genuineness and credibility of the information are not the conditions precedent for registering a case under Section 154 of the Code.
>
> 11. In the present case, undisputedly, the cognizable offences disclosed in the complaint, were under Sections 147, 148, 149, 448, 452, 323 and 395 IPC. The complaint was filed before the Sub-Divisional Judicial Magistrate and the same was endorsed to SHO of concerned Police Station for registering the FIR under Section 154 of the Code. The concerned SHO of the Police Station registered the case only under Sections 452/380/323/34 IPC. Section 395 IPC, which had been disclosed in the complaint, was excluded from the purview of the FIR and resultantly no investigation was carried out by the Police in terms of Sections 156 and 157 of the Code of Criminal Procedure. It is well settled principle of law that in criminal trial, investigation is proceeded by an FIR on the basis of written complaint or otherwise disclosing the offence said to have been committed by the accused. In the present case, a grave miscarriage of justice has been committed by the SHO of concerned Police Station by not registering an FIR on the basis of offence disclosed in the complaint petition. The concerned police Officer is statutorily obliged to register the case on the basis of the offence disclosed in the complaint petition and proceed with investigation in terms of procedure contained under Sections 156 and 157 of the Code. The FIR registered by the Police would clearly disclose that the complaint for offence under Section 395 IPC has been deliberately omitted and, therefore, no investigation, whatsoever, was conducted for the offence under Section 395 IPC.

Without any locus standi application for recalling the order was

filed by the S.H.O., ostensibly, on the ground that no cognizable offence is made out from the complaint. The S.H.O. had no authority to look into the validity of the order passed by the Magistrate and the same was, therefore, no rightly accepted by the Magistrate. Besides, the S.H.O. had no locus standi to refuse to register the FIR.

For the above reasons, it is obvious that once the Magistrate has passed order under Section 156(3), Cr.P.C. the State has no locus standi to adjudicate upon the order passed by the Magistrate and ask the Court to review its order. It may be observed that before passing order under Section 156(3), the Magistrate is empowered to take cognizance under Section 190, Cr.P.C. Therefore, it is clear from the provisions of the Code of Criminal Procedure that after taking cognizance under Section 190, the Magistrate can forward the complaint under Section 156 (3) for investigation, which, the police cannot question nor the concerned Station House Officer can be treated to be an aggrieved party to challenge the order passed under Section 156 (3).

Adverting to the order impugned passed by the revisional Court it may be seen whether the order passed by the revisional Court is in accordance with the provisions of law.

The learned revisional Court gave its finding that the State, through the S.H.O., Police Station, Jaitaran was having locus to

challenge the order passed by the Magistrate. Upon perusal of the impugned order it is revealed that the learned revisional Court has held that the Magistrate can pass order under Section 156(3) with regard to cognizable offence only. There cannot be any doubt as to this proposition of law. But, in the present case, after forming opinion as to commission of a cognizable offence, the order dated 10.3.2006 was passed by the Magistrate, therefore, it is not open to the concerned Station House Officer to challenge the same without assigning any reasons as to how he is aggrieved by that order. Even if assuming that on account of the allegations levelled against the S.H.O. who conducted the investigation, in personal capacity, locus for challenge would be available but, then too, it was to be challenged in the event of registering the FIR. Here, in this case, it is plain to the vision that attempts have been made to ward off even the occasion for investigating into the allegations made in the complaint. If such attempts are allowed to succeed there will be complete anarchy and protection guaranteed to the citizens under the law will be reduced to nullity. At the time of enactment of the Code of Criminal Procedure, the legislature has considered all aspects of the matter necessitating enactment of the statute and it is expressly provided how a complaint is to be dealt with. There is no power conferred upon the police to refuse to register the case upon any complaint and, once the Magistrate has passed order

under Section 156(3), Cr.P.C. the police can approach the Court only by way of report under Section 173 and, in between, neither the Court can interfere in the investigation nor the police is left with any way to shirk its responsibility. Placing reliance upon the judgments of the Supreme Court, reported in 1999 Cr.L.J. 3909, 2001 Cr.L.J. 313, 2004 (1) Cr.L.J. 5989 and 1996 Cr.L.J. 612, the learned Addl. Advocate General raised contention that the Magistrate is required to apply mind to the allegations contained in the complaint and as it has come out the concerned S.H.O. while making the application submitted that no cognizable offence is made out.

I have considered the cited judgments. In none of these cases, the police has filed application to challnge the order of Magistrate passed under Section 156 (3) Cr.P.C. and refused to register the case. In the facts and circumstances of the present case, their application is not attracted.

In this case, the findings of the learned revisional Court that the S.H.O. was having locus standi is without foundation and without any force of law. More so, it can be said that the learned Addl. Sessions Judge has failed to consider the case in proper manner while treating the S.H.O. as aggrieved party and further committed serious illegality while embarking upon enquiry that no cognizable offence is made out from the contents of the complaint. After application of mind by the Magistrate,

when order is passed under Section 156(3) by him, the concerned Station House Officer has only one option left open to register the case. The formation of opinion by the Magistrate cannot be questioned by the police and, for any reasons, it reaches conclusion in disagreement, that can be expressed only under Section 173(1), Cr.P.C. after registering the case. It may be observed here that the learned revisional Court completely failed to consider profound aspect of the matter that the application filed by the S.H.O. for reviewing/recalling order dated 10.03.2006 tantamounts to police interference in the administration of justice. The Code of Criminal Procedure does not enable the police to impugn the order passed under Section 156(3), Cr.P.C. by the Magistrate. In these circumstances, the finding of the revisional Court is totally against law.

For the reasons indicated herein above, this revision petition is accepted. The order impugned dated 10.11.2006 passed by the learned Addl. Sessions Judge (Fast Track) No.1, Pali (Headquarters Jaitaran) in Criminal Revision No.22/2006 is set aside. Order dated 19.07.2006 as well as order dated 10.03.2006 passed by the learned Addl. Chief Judl. Magistrate, Jaitaran is restored.

(Gopal Krishan Vyas) J.